

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 March 2023

**Public Authority:** Department for Business and Trade  
**Address:** Old Admiralty Building  
London SW1A 2DY

#### **Decision (including any steps ordered)**

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1. The complainant has requested communications between Gary Hoffman and Lord Grimstone, from the Department for International Trade (DIT). The DIT disclosed relevant information and has withheld some under sections 27, 41 and 43 of FOIA, which concern international relations, information provided in confidence and commercial interests respectively.
2. On 7 February 2023, a machinery of government change was announced whereby the DIT was merged into a new government department, the Department for Business and Trade ('the Department').
3. This Decision Notice has therefore been issued to the Department in respect of information originally requested from the DIT. However, for the sake of consistency, the Commissioner will refer to 'the Department' as both the public authority to whom the request was made and the public authority that dealt with the complaint.
4. The Commissioner's decision is that the Department is entitled to withhold the information the complainant has requested under sections 27(1)(a) and 43(2) of FOIA.
5. It is not necessary for the Department to take any steps.

## Request and response

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6. Gary Hoffman is the chair of the English Premier League. Until July 2022 Lord Grimstone was unpaid Minister for Investment jointly at the DIT and the former Department for Business, Energy and Industrial Strategy.
7. On 26 May 2022, the complainant wrote to the Department and requested information in the following terms:

"This is a FOIA request about meetings and correspondence between Lord Grimstone and Gary Hoffman of the Premier League that took place between the period 01 April 2020 and 31 October 2021.

1. Please state how many times Lord Grimstone and Mr Hoffman met during this period. For each meeting, please state:

- a. The location of the meeting
- b. The names and/or job titles of those present
- c. The purpose of the meeting

2. Please also provide copies of any documents related to these meetings. This should include but not be limited to:

- a. Agendas
- b. Minutes
- c. Readouts
- d. Briefing documents
- e. Other meeting memoranda

3. Please also provide copies of communications generated during this period between the two parties. This should include, but not necessarily be limited to:

- a. Emails
- b. Text messages
- c. What's App messages

Thank you for the time and energy you will invest in preparing a response. I would prefer to receive all information in electronic format and in machine-readable formats where applicable."

8. The Department's final position was to disclose relevant information with redactions made under section 27(1) and section 43(2) of FOIA, and the personal data of junior staff redacted under section 40(2).

9. The Department subsequently advised the Commissioner that it also wished to apply section 41(1) of FOIA to some of the withheld information.

## **Reasons for decision**

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10. The Commissioner expects those submitting complaints to provide him with any supporting arguments at the point they submit their complaint. However in this case, the complainant requested the opportunity to provide supporting arguments once the case was allocated. The Commissioner subsequently wrote to the complainant on 27 February 2023 and asked them to provide their submission. On 3 March 2023, and at the complainant's request, he agreed a final extension to 14 March 2023; however the complainant failed to provide any submission by that deadline or the date of this decision.
11. This reasoning covers the Department's reliance on section 27 and section 43 of FOIA to withhold information the complainant has requested. If necessary, he will consider the Department's reliance on section 41.

## **Section 27 – international relations**

12. Under section 27(1)(a) of FOIA, information is exempt information if its disclosure would or would be likely to prejudice relations between the United Kingdom and any other State.
13. The Department has provided the Commissioner with a copy of the information it is withholding under this exemption.
14. In its accompanying submission, the Department has first confirmed that it considers that the prejudice it envisions through disclosure would happen, rather than would be likely to happen.
15. The Department says it is important for UK Ministers to retain the ability to have open conversations with senior political and commercial individuals to support the Government's objectives. Lord Grimstone was party to sensitive conversations, informal updates and commercially sensitive comments that would cause harm if released.
16. The Department has discussed the nature of the information being withheld under this exemption, which the Commissioner does not intend to reproduce in this notice. But the Department says that the information, if disclosed, would harm the UK's relationship with another State – Saudi Arabia - and undermine the trust the Government has with other states. Conducting international relations effectively depends upon maintaining trust and confidence between governments. This

relationship of trust allows for free and frank exchange of information on the understanding that it will be treated in confidence. If the UK does not respect such confidences, then its ability to protect and promote the UK's interests through international relations will be hampered. The State concerned, or indeed other states, may be reluctant to share sensitive information with the UK government in future. They may also be less likely to respect confidential information the UK Government supplies to them; this will inevitably be a detriment to UK interests.

17. The Department has drawn the Commissioner's attention to his previous decision in [IC-80200-P4S0](#). In that decision the Commissioner had found that the Department for International Trade was entitled to rely on section 27(1)(a) and that it was engaged to the higher level of likelihood.
18. The Commissioner considers three tests when he is considering whether information engages the exemption under section 27(1)(a).
19. First, he is satisfied that the harm that the Department alleges relates to the interest within the exemption ie international relations.
20. Second, though he has not reproduced all the detail that the Department provided to him (as to do so would, in effect, disclose information the Department is seeking to protect), the Commissioner is satisfied that a causal link exists between disclosing the information and the envisioned prejudice.
21. Finally, regarding the level of likelihood, the Department's view is that the prejudice would occur as a consequence of disclosure ie it considers that the prejudice is more likely than not to occur.
22. Although different information was requested in IC-80200-P4S0, the Commissioner is again satisfied, having considered the Department's position, and viewed the withheld information, that there would be a real and significant risk of prejudice if the withheld information were to be disclosed. He accepts that, in the circumstances of this case, the higher threshold of likelihood is again met.
23. Because the above three tests have been met the Commissioner finds that the Department has correctly applied section 27(1)(a) to information it is withholding. He has gone on to consider the related public interest test.

### **Public interest test**

24. The Department says it recognises that disclosing the information may offer further understanding into the complexity and intricacy of the subject matter and the role of senior government representatives. Noting this public interest, the Department says it has provided as much

of the requested information as possible and only redacted parts of the documents that are sensitive. Following the release of non-sensitive information there has been [media reporting](#) to inform public discussion.

25. The Department does not consider that disclosing the withheld information would add further value to the public debate that has already been transparently discussed.
26. Against disclosure, the Department has noted (and the Commissioner has found) that disclosure would prejudice the UK's relationship with Saudi Arabia. The Department's says this relationship enables the UK to facilitate the exchange of information, to reach agreements and to maintain cooperation in all aspects of trade.
27. The Commissioner is satisfied that the balance of the public interest favours maintaining the section 27(1)(a) exemption. The public interest in openness has been met through the information the Department disclosed. He does not consider that the public interest in the withheld information is such that it would justify potentially prejudicing international relations.
28. The Department also applied section 41 to some of the information to which it applied section 27. Because the Commissioner has found that all the information to which the Department applied section 27 can be withheld under that exemption, it has not been necessary to consider the Department's application of section 41 to some of that same information.

### **Section 43 – commercial interests**

29. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
30. The Department has provided the Commissioner with a copy of the information it is withholding under this exemption.
31. In its submission, the Department has first confirmed that it considers that the prejudice it envisions through disclosure would be likely to happen, rather than would happen.
32. The Department says that if the information being withheld were disclosed there would be negative repercussions for the English Premier League (EPL) that would be likely to impact its relationship with the Gulf entities negotiating future licences. This is because the criteria or parameters that EPL had considered as part of a business evaluation process would undermine future contractual negotiations, the business relationship with its clients and potentially also the country in which it is incorporated.

33. The Department has told the Commissioner that the UK Government was not a party in the negotiations between the EPL and Gulf entities but has been privy to confidential elements that were sensitive contractual considerations. The Department considers it is likely harmful for future business negotiations to disclose any deliberations or thought processes on what might/might not have been considered from a contractual point of view.
34. The Department had drawn the Commissioner's attention to paragraphs 19 and 20 of his decision in [IC-125070-J3N5](#) which concerned the Ministry of Defence's reliance on section 43(2) and which the Commissioner found to be engaged.
35. The Commissioner again considers three tests when he is considering whether information engages the exemption under section 43(2).
36. First, he is satisfied that the harm that the Department alleges relates to the interest within the exemption ie commercial interests – those of another person, namely EPL.
37. Second, the Commissioner is satisfied that a causal link exists between disclosing the information and the envisioned prejudice. This is because disclosing the information would give an insight into the criteria the EPL considered as part of a business evaluation process. Disclosing those criteria would be likely to undermine its future contract negotiations. He has noted correspondence the Department received from the EPL as a result of this complaint. While the correspondence focusses on section 41, EPL confirms that it considers that the redacted information should be withheld.
38. Finally, regarding the level of likelihood, the Commissioner accepts the Department's position that the prejudice would be likely to occur as a consequence of disclosure ie that the lower level of prejudice applies.
39. Because the above three tests have been met the Commissioner finds that the Department has correctly applied section 43(2) to information it is withholding. He has gone on to consider the related public interest test.

### **Public interest test**

40. The Department acknowledges the public interest in openness and transparency. It says releasing the information might provide the public with better understanding into the decision-making process of the EPL concerning the takeover of Newcastle United by a Saudi Arabia led consortium. The Department has noted that it provided as much of the requested information as possible and only redacted parts of the documents that were sensitive.

41. Against disclosure, the Department says that disclosure would have an adverse impact on the future business prospects and opportunities of the stakeholders involved. It considers that disclosure is not in the public interest as it would be likely to have an adverse impact on the Government's ability to secure confidence from external organisations and/or companies to voluntarily share commercially sensitive information for fear of it going into the public domain. If the information was disclosed, it might give competitors a degree of commercial advantage and therefore damage "their" (by which the Commissioner understands the Department to mean EPL's) wider commercial interest and opportunities.
42. The Commissioner considers complaints on a case-by-case basis. If he did not accept, in this case, that disclosing the information would inhibit external organisations from sharing information with the Government in the future, that does not mean he would have the same view in a different case with a different set of circumstances. Therefore he does not consider that the Department's public interest argument about the sharing of commercial information to be an especially strong one.
43. However, the Commissioner agrees with the Department that there is a strong public interest in the EPL remaining as competitive as possible. He considers that this argument is sufficiently strong to cause the balance of the public interest to favour maintaining the section 43(2) exemption. The Commissioner accepts that there is a public interest in transparency about the decision-making behind the takeover of Newcastle United but considers that the disclosed information addresses that public interest to a satisfactory degree.
44. The Department also applied section 41 to the information to which it applied section 43. Because the Commissioner has found that the information to which the Department applied section 43 can be withheld under that exemption, it has not been necessary to consider the Department's application of section 41 to that same information.

## **Right of appeal**

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45. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**